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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DOUGLAS VERNON HUDSON,

11 Plaintiff,

12 v.

13 CHARLES W. SCHARF, et al.,

14 Defendant.

CASE NO. C21-5827JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is Defendant Charles W. Scharf's motion to dismiss *pro se*
17 Plaintiff Douglas Vernon Hudson's amended complaint. (Mot. (Dkt. # 38); Am. Compl.
18 (Dkt. # 9).) Mr. Hudson opposes dismissal. (Resp. (Dkt. # 39).) Mr. Scharf has also
19 moved to stay all discovery deadlines until the court has ruled on his motion to dismiss.
20 (Stay Mot. (Dkt. # 42); *see also id.* ¶ 8 (indicating that Defendant Don Fleming does not
21 object to the motion).) Mr. Hudson opposes staying or extending the discovery
22 deadlines. (*See id.* ¶ 6.) The court has considered the parties' submissions, the relevant

portions of the record, and the applicable law. Being fully advised,¹ the court GRANTS Mr. Scharf's motion to dismiss and DENIES his motion to stay or extend discovery deadlines as moot.

II. BACKGROUND

The court has previously described the background for this matter, which arises out of Mr. Hudson's purchase of a vehicle from Northwest Motorsports, Inc. ("Northwest Motorsports") on February 25, 2019. (*See* 1/26/22 Order (Dkt. # 18) at 2-3; Am. Comp. ¶ 1.) After reviewing Mr. Hudson's amended complaint pursuant to 28 U.S.C. § 1915(e), the court dismissed all of Mr. Hudson's claims with prejudice, except a claim that he brought under the Truth In Lending Act ("TILA") for rescission of his vehicle purchase. (1/26/22 Order at 8; Am. Compl. ¶¶ 9-26.)

III. ANALYSIS

Mr. Scharf brings this motion pursuant to Federal Rule of Civil Procedure 12(b)(6). (Mot. at 3-4.) He asserts that Mr. Hudson's TILA claim fails, to the extent it is stated against him in his individual capacity, because Mr. Hudson does not allege any involvement by Mr. Scharf in the at-issue vehicle purchase. (*Id.* at 4-5.) Mr. Scharf further argues that, to the extent Mr. Hudson intended to state the claim against Wells Fargo Bank, N.A. or Wells Fargo Auto (collectively, "Wells Fargo"), the claim fails because the provision of TILA under which Mr. Hudson seeks rescission does not apply to automobile loans and, even if it did, Mr. Hudson failed to execute a valid rescission

¹ No party requests oral argument (*see* Mot. at 1; Resp. at 1), which the court concludes would not be helpful to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 notice. (*Id.* at 5-7.) After describing the applicable legal standard on a motion to dismiss,
2 the court considers whether any of Mr. Scharf’s arguments warrant dismissal of Mr.
3 Hudson’s TILA claim.

4 **A. Legal Standard**

5 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint
6 “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). The
7 court construes the complaint in the light most favorable to the nonmoving party. *Livid*
8 *Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). “To
9 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
10 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
11 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court
13 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
14 *Id.* Additionally, the court must exercise its authority to dismiss a claim filed by a litigant
15 proceeding *in forma pauperis* (“IFP”), if it determines “at any time” that the action fails
16 to state a claim. See 28 U.S.C. § 1915(e)(2)(B). Because Mr. Hudson is a *pro se*
17 plaintiff, the court must construe his pleadings liberally. See *Hebbe v. Pliler*, 627 F.3d
18 338, 342 (9th Cir. 2010).

19 **B. Mr. Hudson’s TILA Claim**

20 Mr. Hudson contends that his rights under TILA were violated in various ways in
21 the course of his vehicle purchase from Northwest Motorsports and he thus seeks to
22 rescind that transaction. (See Am. Compl. ¶ 11 (first citing 15 U.S.C. § 1635; and then

1 citing 12 C.F.R. § 1026.23 (“Regulation Z”).) Mr. Scharf argues that Mr. Hudson has
2 failed to state a TILA claim against him in his individual capacity because he alleges no
3 facts showing any involvement, let alone wrongdoing, by Mr. Scharf in the at-issue
4 vehicle purchase. (Mot. at 4-5.) Mr. Scharf additionally argues that Mr. Hudson fails to
5 state a TILA claim against Wells Fargo because he seeks relief under a provision of
6 TILA that does not apply to automobile loans and, even if it did, Mr. Hudson failed to
7 execute a valid rescission notice. (*Id.* at 5-7.)

8 TILA provides that, with certain exceptions, “in the case of any consumer credit
9 transaction . . . in which a security interest . . . is or will be retained or acquired in any
10 property which is used as the principal dwelling of the person to whom credit is extended,
11 the obligor shall have the right to rescind the transaction.” 15 U.S.C. § 1635(a); *see also*
12 *id.* § 1635(e) (excluding certain transactions). Regulation Z, which was promulgated to
13 implement TILA, likewise provides that, with certain exceptions, “[i]n a credit
14 transaction in which a security interest is or will be retained or acquired in a consumer’s
15 principal dwelling, each consumer whose ownership interest is or will be subject to the
16 security interest shall have the right to rescind the transaction.” 12 C.F.R.
17 § 1026.23(a)(1); *see also id.* § 1026.23(f) (exempting certain transactions).

18 Mr. Hudson alleges that he purchased a vehicle from Northwest Motorsports
19 through a financing arrangement and, “[a]s part of this transaction [Northwest
20 Motorsports] retained a security interest in . . . a private automobile.” (*See* Am. Compl.
21 ¶ 3.) As is clear from TILA’s text, however, that statute applies only to consumer credit
22 transactions where the creditor obtains an interest in the consumer’s “principal dwelling.”

1 *See* 15 U.S.C. § 1635(a). Thus, while it “protect[s] consumers whose residences are
2 jeopardized by operation of all types of security interests acquired by creditors,” *N. C.*
3 *Freed Co. v. Bd. of Governors of Fed. Rsrv. Sys.*, 473 F.2d 1210, 1216 (2d Cir. 1973), it
4 provides no right of rescission where a security interest is taken in an automobile.

5 Mr. Hudson argues that the language of section 1635(a) merely “expounds on
6 when conditions are met” for rescission but does not “disqualify all other claims” for that
7 relief. (*See Resp. at 2.*) Thus, Mr. Hudson seems to argue, if Congress wished to exclude
8 vehicle financing arrangements like his from TILA’s protections, they would have
9 included such transactions in section 1635(e). (*See id.*) Although the court understands
10 the appeal of that argument for Mr. Hudson, it misreads TILA’s text and structure.

11 Section 1635(e) creates exceptions to the rescission right established in section 1635(a)
12 and focuses on those transactions in which a creditor might take a security interest in the
13 consumer’s home—like a residential mortgage—because those are the only transactions
14 otherwise eligible for rescission under section 1635(a). *See* 15 U.S.C. §§ 1635(a), (e);
15 *see also* 12 C.F.R. §§ 1026.23(a)(1), (f); *Zakarian v. Option One Mortg. Corp.*, 642 F.
16 Supp. 2d 1206, 1213 (D. Haw. 2009) (“The right to rescind does not arise in all credit
17 transactions in which a security interest in the consumer’s principal residence is
18 granted.”). Mr. Hudson would have the court construe section 1635(e)’s limitation on
19 when consumers can back out of an arrangement that puts their home at risk as permitting
20 rescission for any and all credit transactions under section 1635(a). (*See Resp. at 2.*)
21 Nothing in TILA’s text or structure suggests that is a plausible reading.

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1 Because the consumer transaction Mr. Hudson seeks to rescind is a vehicle
2 purchase that does not have any alleged connection to his principal dwelling, he cannot
3 state a claim for relief under section 1635 of TILA or its implementing regulations.
4 Accordingly, the court GRANTS Mr. Scharf's motion to dismiss without addressing his
5 remaining arguments concerning the capacity in which he is sued or the sufficiency of
6 Mr. Hudson's rescission notice. (*See* Mot. at 4-5, 6-7.)

7 Although Mr. Scharf's motion to dismiss does not note until April 29, 2022 (*see*
8 Mot. at 1), the court has determined, after considering Mr. Hudson's response, that the
9 amended complaint fails to state a plausible claim for relief under TILA.² Accordingly,
10 the court exercises its authority under 28 U.S.C. § 1915(e) to dismiss this claim without
11 waiting for Mr. Scharf's motion to note. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) (requiring the
12 court "to dismiss the case at any time" upon a determination that a claim brought by a
13 plaintiff proceeding IFP "fails to state a claim on which relief may be granted"). Further,
14 because Mr. Hudson has failed to state a claim under TILA for reasons that apply with
15 equal force to Mr. Scharf and Defendant Don Fleming, the claim is DISMISSED as to
16 both defendants. *See id.*

17 Finally, given the inapplicability of TILA to the conduct at issue in Mr. Hudson's
18 amended complaint, further amendment of Mr. Hudson's TILA claim would be futile.
19 Thus, the court DISMISSES that claim with prejudice and without leave to amend. *See*
20 *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

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22 ² Mr. Hudson's claim for rescission under TILA was the only claim that that survived the
court's prior section 1915(e) review of his amended complaint. (*See* 1/26/22 Order at 8.)

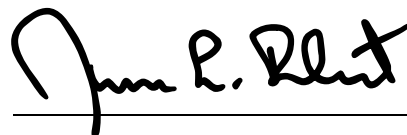
1 **C. Mr. Scharf's Motion to Stay Discovery**

2 Mr. Scharf has also moved to stay discovery in this matter pending the court's
3 decision on his motion to dismiss. (*See* Stay Mot. at 1.) Because this order dismisses
4 Mr. Hudson's only claim, *see supra* Section III.B, the pending discovery-related
5 deadlines are inapplicable. Accordingly, Mr. Scharf's motion to stay or extend discovery
6 deadlines in this matter is DENIED as moot.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Mr. Scharf's motion to dismiss (Dkt. # 38) is
9 GRANTED. The court DISMISSES Mr. Hudson's claim for rescission under TILA with
10 prejudice and does so as to both Mr. Scharf and Mr. Fleming pursuant to its authority
11 under 28 U.S.C. § 1915(e). Mr. Scharf's motion to stay or extend the discovery deadlines
12 (Dkt. # 42) is DENIED as moot. The court DIRECTS the Clerk to close this case.

13 Dated this 25th day of April, 2022.

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15 JAMES L. ROBERT
16 United States District Judge
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